



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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February 1, 2010

Yakama Indian Nation  
c/o Todd Newsome, Fish Biologist  
PO Box 151  
Toppenish WA 98948-0151

**Re: Water Right Application No. S4-35257 – Temporary Surface Water Diversion on Rattlesnake Creek to be Used for Acclimation of Juvenile Coho Salmon**

**THIS AUTHORIZATION SHALL IN NO MANNER BE CONSTRUED TO GUARANTEE OR IMPLY THAT A PERMANENT WATER RIGHT WILL ISSUE FOR THE WATER USE HEREIN AUTHORIZED.**

**Background**

On July 23, 2009, the Yakama Indian Nation of Toppenish, Washington, filed an application to divert water from Rattlesnake Creek for acclimation of juvenile Coho Salmon from February 1, 2010 through April 1, 2015.

The applicant proposes to divert water at a maximum of 80 gallons per minute (0.18 cubic feet per a second) from Rattlesnake Creek into a mobile acclimation tank approximately one mile from the confluence of the Naches River. The water will flow through the tank and return to Rattlesnake Creek (approximately 20 feet) downstream of the point of diversion. By returning the water immediately downstream, the water use will be considered non-consumptive. The water will be used during the non-irrigation season from February 1 through April 1 during the years 2010 through 2015.

The point of diversion will be located within SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4, T. 15 N., R. 15 E.W.M., Yakima County, Parcel No. 1515044003.

The place of use will be located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4, T. 15 N., R. 15 E.W.M., Yakima County, Parcel No. 1515044003.

**Public Notice**

Public notice of the application was published in the Yakima Herald-Republic on December 12 and December 19, 2009. No letters of protest or comments were received during the 30-day protest period.



### **Other Water Rights Appurtenant to the Point of Diversion**

Yakima Adjudication Court confirmed Claim No. 07735 within the Naches River Subbasin which authorizes the proposed point of diversion noted above. The point of diversion has a fish screen.

### **Impairment**

Rattlesnake Creek is a tributary to the Naches River all of which are part of the Yakima Basin Adjudication. The requested period of use for this Temporary Authorization is during the non-irrigation season. The probability of impairing senior water rights by diverting water only during the months of February and March is minimal. In addition there are no points of diversion within the bypass reach. Typically, the high flow of Rattlesnake Creek during February and March is at a level that would allow the diversion to take place without being detrimental to aquatic species.

### **Public Interest**

Washington State Department of Fish and Wildlife considers this project beneficial to fish. The goal of creating a self sustaining Coho Salmon population that returns to Rattlesnake Creek is in the public interest.

### **Conclusions and Decision**

There is water available for the proposed project and can take place on a temporary basis without impairing existing water rights, is non-consumptive, and is not contrary to public interest.

This Temporary Authorization is subject to the following limitations and provisions:

1. The priority date of this water right is July 23, 2009.
2. The point of diversion will be located within SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4, T. 15 N., R. 15 E.W.M., Yakima County, Parcel No. 1515044003.
3. The place of use will be located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4, T. 15 N., R. 15 E.W.M., Yakima County, Parcel No. 1515044003.
4. The period of use will be for the non-irrigation season from February 1 through April 1.
5. This authorization will expire April 1, 2015, unless sooner revoked for cause.
6. The diversion shall not exceed 0.18 cubic feet per second (80 gallons per minute).
7. The purpose of use is for acclimation of juvenile Coho Salmon.
8. The diversion intake shall be tightly screened at all times with wire mesh having openings with dimensions not greater than 0.125 (1/8) inch.
9. The operator of the system under this authorization shall:

- Be aware of the parameters and provisions and operate accordingly.
  - Have a copy of this Temporary Authorization.
  - Provide said copy of this Temporary Authorization upon request of Department of Ecology staff.
10. Diversion of water under this Temporary Authorization may be limited or otherwise regulated in favor of senior rights.
  11. Under RCW 90.03.360, measuring is required for all surface water diversions, and all withdrawals of ground water in fish-critical basins. Whenever water is being diverted, volume of water shall be recorded and maintained by the permittee. These readings shall be documented by time, date, and the person conducting the measurements. Copies of these records shall be submitted to the Department of Ecology by January 31 of each year.
  12. The following information shall be included with each submittal of water use data: owner, contact name if different, mailing address, daytime phone number, WRIA, Permit No., source name and maximum instantaneous rate of diversion (cubic feet per second).
  13. Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions.
  14. This Temporary Authorization shall in no way excuse the applicant from compliance with any applicable federal, state, or local statutes, ordinances, or regulations including those administered by other programs of the Department of Ecology.
  15. The water source and place of use may not be located entirely upon land owned by the applicant. Therefore, the applicant is advised that issuance of a permit by the Department of Ecology for appropriation of the waters in question does not convey a right of access to, or other right to use, land which the applicant does not legally possess.
  16. No water right in perpetuity shall result from this Temporary Authorization.

This Decision may be appealed pursuant to RCW 34.05.514(3), RCW 90.03.210(2), and Pretrial Order No. 12 entered in *State of Washington, Department of Ecology v. James Acquavella, et al.*, Yakima County Superior Court No. 77-2-01484-5 (the general adjudication of surface water rights in the Yakima River Basin). The person to whom this Decision is issued, if he or she wishes to file an appeal, must file the notice of appeal with the Yakima County Superior Court **within thirty (30) days of receipt of this Decision**. Appeals must be filed with the Superior Court Clerk's Office, Yakima County Superior Court, 128 North 2<sup>nd</sup> Street, Yakima WA 98901, RE: Yakima River Adjudication. Appeals must be served in accordance with Pretrial Order No. 12, Section III ("Appeals Procedures"). The content of the notice of appeal must conform to RCW 34.05.546. Specifically, the notice of appeal must include:

The name and mailing address of the appellant;  
Name and address of the appellant's attorney, if any;  
The name and address of the Department of Ecology;  
The specific application number of the decision being appealed;  
A copy of the decision;  
A brief explanation of Ecology's decision;  
Identification of persons who were parties in any adjudicative proceedings that led to Ecology's decision;  
Facts that demonstrate the appellant is entitled to obtain judicial review;  
The appellant's reasons for believing that relief should be granted; and  
A request for relief, specifying the type and extent of relief requested.

The "parties of record" who must be served with copies of the notice of appeal under RCW 34.05.542(3) are limited to the applicant of the decision subject to appeal, Ecology and the Office of the Attorney General.

All others receiving notice of this Decision, who wish to file an appeal, must file the appeal with the Yakima County Superior Court within **thirty (30) days of the date the Order was mailed**. The appeal must be filed in the same manner as described above.

Sincerely,



Mark C. Schuppe, Section Manager  
Water Resources Program

MCS:EH:gg/10013

Certified Mail: 7006 01000002 8191 9536

Enclosures: Water Measuring Requirements

cc: Philip Rigdon, Director, Natural Resources Division, Yakama Nation  
Robert Inovye